

# EXHIBIT P

U.S. DISTRICT COURT  
FOR THE WESTERN DISTRICT  
OF PENNSYLVANIA

\* \* \* \* \*

TINA LINDQUIST,	*	
Plaintiff	*	Case No.
vs.	*	04-249-ENE
HEIM, LP,	*	
Defendant	*	

\* \* \* \* \*

DEPOSITION OF  
JAN OVIATT  
July 22, 2005

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1 information from people who are  
2 represented by Counsel to sit them in  
3 a room and ask questions. And  
4 everything is under oath and recorded  
5 by our court reporter here. The most  
6 important thing that I can tell you  
7 is please let me know if I ask any  
8 question that is unclear. I only  
9 want to ask questions as you  
10 understand them and can accurately  
11 answer; okay?

12 A. Okay.

13 Q. And if I ask you a question  
14 that's unclear, will you let me know  
15 that and don't answer it?

16 A. Sure.

17 Q. Okay? What is your current  
18 position here at Corry?

19 A. Group leader of maintenance.

20 Q. And where does that fall in  
21 the ranking of ---?

22 A. Just under Gary.

23 Q. Just under Gary Merkle  
24 (phonetic)?

25 A. Which would be my supervisor.

1 Q. Do you know the capacity of  
2 that press brake?

3 A. Pounds wise?

4 Q. Yes.

5 A. I'm not sure.

6 Q. Okay. Have you ever operated  
7 the Heim press brake before?

8 A. Yes. As far as --- I  
9 installed the two-hand control and  
10 the foot pedal on it.

11 Q. When did you install the two-  
12 hand control and the foot pedal on  
13 it?

14 A. I couldn't give you a date.  
15 Shortly after we purchased it. I  
16 don't know if you have that date or  
17 not. I'm not even sure.

18 Q. Now, my client sold it to a  
19 different company back in 1978. It  
20 was used for 20 years out in  
21 Connecticut without any problem. And  
22 then it was ultimately sold, I  
23 understand, at an auction, and it was  
24 purchased by Corry, perhaps in 1999,  
25 February, 1999. At least, that's

1 when they purchased the parts and  
2 operations book for it.

3 A. That could be.

4 Q. But I don't have a specific  
5 purchase date for Corry's purchase of  
6 that press brake. But in any event,  
7 you installed the foot switch and the  
8 two-palm button pedestal after it was  
9 purchased?

10 A. Correct.

11 Q. Where did you obtain the foot  
12 switch from?

13 A. I believe that was the one  
14 that was already on it. I'm not  
15 going to swear to that. But just by  
16 memory, I think that was already  
17 attached to it, because that's all it  
18 had on it was a foot pedal.

19 Q. Okay. Do you know if the foot  
20 pedal that may have come with the  
21 machine when Corry purchased it was  
22 the original foot pedal that was sold  
23 with the machine over 20 years  
24 previously in 1978?

25 A. I'd be surprised if it was,

1 just because of the condition.

2 Q. And what do you mean by that?

3 A. Well, it was a fairly newer  
4 model, from what I've seen around.

5 Q. Okay.

6 A. It had the toe guard in it.  
7 You know, you had to activate that  
8 part before the foot lever would go  
9 down.

10 Q. And what feature is that?

11 A. I assume it's a safety  
12 feature. Your foot has to be in so  
13 far before you can push the pedal  
14 down.

15 Q. Right. So there's no  
16 accidental tripping of the  
17 footswitch?

18 A. Correct.

19 Q. And was there also a housing  
20 over the foot switch ---

21 A. Correct.

22 Q. --- so that something couldn't  
23 fall on it or you couldn't step on it  
24 accidentally?

25 A. Yes.

1 Q. Okay. And based upon those  
2 features, and the appearance of the  
3 foot switch, you believe that that  
4 would not have been the original 1978  
5 ---?

6 A. Correct.

7 Q. Okay. Do you know who the  
8 manufacturer of that foot switch was?

9 A. No, sir.

10 Q. Who was involved with  
11 purchasing that press brake, the Heim  
12 press brake?

13 A. To the best of my knowledge it  
14 would be Gary Merkle, and I'm not  
15 sure of that. That's when my  
16 involvement first got started with it  
17 was through Gary.

18 Q. Do you know who installed and  
19 got this particular press brake up  
20 and running after it was purchased?  
21 Besides your work, which you  
22 mentioned being involved to some  
23 extent?

24 A. Probably maintenance got it  
25 ready to run, but as far as any

1 I think those are all  
2 the questions I have, sir.  
3 Mr. Hartman, I'm sure, has ---

4 ATTORNEY HARTMAN:

5 I'm just going to be  
6 here for a minute.

7 CROSS EXAMINATION

8 BY ATTORNEY HARTMAN:

9 Q. With regard to the foot pedal,  
10 you had indicated that you thought it  
11 might be a newer version of foot  
12 pedal ---

13 A. Uh-huh (yes).

14 Q. --- of its design; am I  
15 correct?

16 A. Safety design.

17 Q. And appearance.

18 ATTORNEY ROBINSON:

19 Objection to form.

20 BY ATTORNEY HARTMAN:

21 Q. The appearance, it involved  
22 the fact that it had a cover and that  
23 you had to stick your foot in and hit  
24 it; am I correct?

25 ATTORNEY ROBINSON:



1                   Hold on, this is  
2                   misleading. I'm going to tell  
3                   you right now. This is  
4                   misleading, I'm not going to  
5                   let it go on. He's indicated  
6                   --- hold on. He's indicated  
7                   that the design features in  
8                   addition to the new look of  
9                   it, which you have  
10                  conspicuously kept out of your  
11                  question. So it's misleading  
12                  and the only thing I can do is  
13                  try to correct it. But he's  
14                  indicated a couple of reasons  
15                  and he left out one  
16                  significant one.

17 BY ATTORNEY HARTMAN:

18 Q.           Did --- absent the design of  
19 it, the way it looked to you from the  
20 design, did the fact that it was new  
21 and shiny or the way the paint looked  
22 make you think it was new?

23 A.           It was fairly new in  
24 appearance. The safety features, the  
25 design looks. The paint wasn't all

1 scuffed off. It wasn't dragged  
2 through a pile of crap. It didn't  
3 have a lot of chips in it. You know,  
4 it was fairly clean, fairly new.

5 Q. Okay.

6 A. Appearing.

7 Q. Appearing. That's fine.  
8 That's what I needed to know. Now,  
9 with regard to the appearance, let's  
10 look at the design element.

11 A. Okay.

12 Q. If you would come to learn  
13 that in 1978, the design was similar  
14 to what you saw, would that change  
15 your opinion as to if the foot pedal  
16 was new?

17 ATTORNEY ROBINSON:

18 Object to the form of  
19 the question. Don't concern  
20 yourself with my objection. I  
21 don't understand it.

22 A. Can you repeat that?

23 BY ATTORNEY HARTMAN:

24 Q. Okay. You talk about the  
25 safety features. If in 1978, the

1 foot pedal had those types of safety  
2 features that you saw, would that  
3 change your opinion that this foot  
4 pedal was a newer design as opposed  
5 to it could have been a 1978 one that  
6 was well maintained?

7 A. No. Simply because the wear  
8 of the machine, the condition of the  
9 machine, compared to the foot pedal.

10 Q. Well, can you paint a foot  
11 pedal?

12 A. Not as good as --- you can't  
13 paint nothing factory color. I don't  
14 care how you try. I can't. I mean,  
15 you'd have to have pretty good --- I  
16 mean, the decals were still on it.

17 Q. Okay. Would you look at the  
18 pictures here of the foot pedal and  
19 --- I'm sorry, I don't see the  
20 decals.

21 ATTORNEY ROBINSON:

22 Yeah, it's on there.

23 You have to look through ---.

24 A. That's ---.

25 ATTORNEY ROBINSON:

1 I could help you if you  
2 want me to.

3 A. Yeah. See, there's a decal  
4 across the top ---

5 BY ATTORNEY HARTMAN:

6 Q. Okay, the silver ---

7 ATTORNEY ROBINSON:

8 What are we looking at  
9 here, sir?

10 ATTORNEY HARTMAN:

11 We're looking at  
12 Exhibit N, Corry N, picture  
13 number 32.

14 BY ATTORNEY HARTMAN:

15 Q. And you're pointing to what  
16 appears to be like a silver patch of  
17 ---?

18 A. Silver and black decal on top  
19 of some sort.

20 Q. Okay. So that's the decal  
21 that you're concerned about?

22 A. Right. And now this is today,  
23 or on this date, when I installed it,  
24 the condition was obviously newer  
25 than that because it hadn't been run